S.B. CIVIL WRIT PETITION NO.7443/2007

Fateh Lal. vs. Jagdip Agarwal and another.

Date : 14.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.RS Mankad, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner/plaintiff's application filed under Order 7 Rule 11 CPC was dismissed by the trial court on the ground that the question of limitation in the facts of the case can be decided only after the evidence of the parties. However, the trial court observed that prima-facie, the suit appears to be within limitation.

The petitioner's apprehension is that this observation of the trial court will come in the way of the petitioner when the petitioner will pray for dismissal of the suit as barred by time.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the court below in the impugned order.

Since the trial court observed that prima-facie the suit appears to be within limitation but

the question of limitation has to be decided after evidence of the parties, therefore that prima-facie finding is not the decision on issue of limitation. However, it is made clear that while deciding the question of suit being barred by time, the trial court will decide the question of limitation uninfluenced of the opinion formed in the impugned order.

Accordingly, this writ petition is hereby dismissed with the above observations.

(PRAKASH TATIA), J.

S.Phophaliya